

**RULES
OF
DEPARTMENT OF COMMERCE AND INSURANCE
DIVISION OF REGULATORY BOARDS
TENNESSEE STATE BOARD OF ACCOUNTANCY**

**CHAPTER 0020-3
RULES OF PROFESSIONAL CONDUCT**

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0020-3-.01 DEFINITIONS.

- (1) For the purpose of this Chapter, unless the context otherwise requires:
 - (a) “Client” shall be defined as in Tenn. Code Ann. §62-1-103;
 - (b) “Enterprise” means any person(s) or entity, whether organized for profit or not, with respect to which a licensee performs professional services;
 - (c) “Firm” means a sole proprietorship, partnership, or corporation holding a permit or required to hold a permit issued under Tenn. Code Ann. §§62-1-108, 62-1-109 or corresponding prior law;
 - (d) “Licensee” shall be defined as in Tenn. Code Ann. §62-1-103;
 - (e) “Professional service” means any service performed or offered by a licensee for a client in the course of the practice of public accountancy.

Authority: T.C.A. §§62-1-105 and 62-1-111. **Administrative History:** Original rule filed June 9, 1981; effective August 18, 1981. Amendment filed February 18, 1993; effective April 3, 1993. Amendment filed May 11, 1995; effective July 24, 1995. Repeal and new rule filed June 10, 1999; effective August 24, 1999.

0020-3-.02 APPLICABILITY.

- (1) The provisions of this Chapter shall apply to all professional services performed in the practice of public accountancy or in the provision of accounting services, and shall apply to all licensees except:
 - (a) Where the wording of a rule indicates otherwise; and
 - (b) That a licensee who is practicing public accountancy outside the United States will not be subject to disciplinary action by the Board for departing from any of the provisions of this chapter as long as the licensee’s conduct is in accord with the standards of professional conduct applicable to the practice of public accountancy in the country in which the licensee is practicing. However, where a licensee's name is associated with financial statements under circumstances which would entitle the reader to assume that United States practices are followed, the licensee shall comply with rules within this chapter.

(Rule 0020-3-.02, continued)

- (2) A licensee shall comply with the AICPA Code of Professional Conduct when these rules are silent on any matter.

Authority: T.C.A. §§62-1-105 and 62-1-111. **Administrative History:** Original rule filed June 9, 1981; effective August 18, 1981. Amendment filed February 18, 1993; effective April 3, 1993. Amendment filed April 20, 1994; effective July 4, 1994. Repeal and new rule filed June 10, 1999; effective August 24, 1999. Amendment filed August 15, 2005; effective October 29, 2006.

0020-3-.03 INDEPENDENCE.

A licensee in the performance of professional services, including those who are not members of the AICPA, shall conform to the independence standards established by the AICPA, and where applicable, the United States Securities and Exchange Commission, the General Accounting Office and other regulatory or professional standards setting bodies.

Authority: T.C.A. §§62-1-105 and 62-1-111. **Administrative History:** Original rule filed June 9, 1981; effective August 18, 1981. Amendment filed February 18, 1993; effective April 3, 1993. Repeal and new rule filed June 10, 1999; effective August 24, 1999. Amendment filed October 15, 2003; effective December 29, 2003. Amendment filed August 15, 2005; effective October 29, 2006.

0020-3-.04 INTEGRITY AND OBJECTIVITY.

- (1) In the performance of any professional service, a licensee shall maintain objectivity and integrity, shall be free of any undisclosed conflicts of interest, and shall not knowingly misrepresent facts or subordinate his or her judgment to others.

Authority: T.C.A. §§62-1-105 and 62-1-111. **Administrative History:** Original rule filed June 9, 1981; effective August 18, 1981. Amendment filed February 18, 1993; effective April 3, 1993. Repeal and new rule filed June 10, 1999; effective August 24, 1999.

0020-3-.05 CONTINGENT FEES, COMMISSIONS, AND OTHER CONSIDERATION.

- (1) As used in this rule unless the context otherwise requires:
 - (a) “Attest” shall be defined as in Tenn. Code Ann. §62-1-103.
 - (b) “Audit” means an examination of financial statements of a person or entity by a certified public accountant or public accountant, conducted in accordance with generally accepted auditing standards, to determine whether, in the opinion of the certified public accountant or public accountant, the statements conform with generally accepted accounting principles or, if applicable, with another comprehensive basis of accounting.
 - (c) “Commission” means compensation for recommending or referring any product or service to be supplied by another person.
 - (d) “Compilation of a financial statement” means a presentation of information in the form of a financial statement that is the representation of any other person without the undertaking of the certified public accountant or public accountant to express any assurance on the statement.
 - (e) “Consideration” means compensation other than a commission, including but not limited to compensation for recommending or referring any service of a certified public accountant or public accountant to any person.

(Rule 0020-3-.05, continued)

- (f) “Contingent fee” means a fee established for the performance of any service pursuant to an arrangement under which a fee will not be charged unless a specified finding or result is attained, or under which the amount of the fee is otherwise dependent upon a finding or result of such service. “Contingent fee” does not mean a fee fixed by a court or other public authority, or a fee related to any tax matter which is based upon the results of a judicial proceeding or the findings of a governmental agency.
 - (g) “Examination of prospective financial information” means an evaluation by a certified public accountant or public accountant of a forecast or projection, the support underlying the assumptions in the forecast or projection, whether the presentation of the forecast or projection is in conformity with professional presentation guidelines, or whether the assumptions in the forecast or projection provide a reasonable basis for the forecast or projection.
 - (h) “Person” means any natural person, corporation, partnership, or other entity.
 - (i) “Review of a financial statement” means to perform inquiries and analytical procedures that permit a certified public accountant or public accountant to determine whether there is a reasonable basis for expressing limited assurance that there are no material modifications that should be made to financial statements in order for them to be in conformity with generally accepted accounting principles or, if applicable, with another comprehensive basis of accounting.
- (2) A licensee shall neither pay any consideration or commission to obtain a client nor accept any consideration or commission when the licensee or the licensee's firm also performs for that client the services listed in T.C.A. § 62-1-122(a)(1) through (a)(3). This prohibition applies during the period in which the licensee is engaged to perform any of the listed services and the period covered by any historical financial statements involved in such listed services.
 - (3) A licensee who is not prohibited by this rule from performing services or receiving consideration or a commission and who is paid or expects to be paid consideration or a commission shall disclose that fact, in compliance with the requirements of T.C.A. §62-1-122 and Rule 0020-3-.06, to any person to whom the licensee recommends or refers a product or service to which the commission or consideration relates.
 - (4) Any licensee who accepts consideration or a commission for a referral shall disclose such acceptance or payment to the client in compliance with the requirements of T.C.A. §62-1-122 and Rule 0020-3-.06.
 - (5) A licensee shall not receive or agree to receive a contingent fee from a client for the following:
 - (a) Performance of any professional services for a client for whom the licensee or person associated with the licensee performs any of the services listed in T.C.A. § 62-1-123(b)(1)(A) through (C) ; or
 - (b) Preparation of an original tax return.
- This prohibition applies during the period in which the licensee is engaged to perform any of the listed services and the period covered by any historical financial statements involved related to such services.
- (6) Any licensee who accepts or agrees to accept a contingent fee shall disclose the terms of such contingent fee to the client in compliance with the requirements of Tenn. Code Ann. §62-1-123 and Rule 0020-3-.06.

(Rule 0020-3-.05, continued)

- (7) Nothing in this rule shall be construed to prohibit:
 - (a) Payments for the purchase of all, or a part, of an accounting practice;
 - (b) Retirement payments to persons formerly engaged in the practice of public accountancy or payments to the heirs or estates of such persons; or
 - (c) Payments, including incentive or bonus payments, to employees or members of an accounting firm as compensation for their services.

Authority: T.C.A. §§62-1-105, 62-1-111, 62-1-122 and 62-1-123. **Administrative History:** Original rule filed June 9, 1981; effective August 18, 1981. Amendment filed February 18, 1993; effective April 3, 1993. Amendment filed May 11, 1995; effective July 24, 1995. Amendment filed February 16, 1998; effective May 2, 1998. Repeal and new rule filed June 10, 1999; effective August 24, 1999. Amendment filed August 15, 2006; effective October 29, 2006.

0020-3-.06 DISCLOSURES.

- (1) A licensee who is not prohibited from performing services or receiving consideration or a commission and who is paid or expects to be paid consideration or a commission shall disclose that fact in compliance with the requirements of this rule to any person to whom the licensee recommends or refers a product or service to which the commission relates.
- (2) Any licensee who accepts consideration or a commission for a referral shall disclose such acceptance or payment to the client in compliance with the requirements of this rule.
- (3) Any licensee who accepts or agrees to accept a contingent fee shall disclose the terms of such contingent fee to the client in compliance with the requirements of this rule.
- (4) The disclosure must:
 - (a) Be in writing and be clear and conspicuous;
 - (b) State the amount of the consideration or commission or the basis on which it will be computed; and
 - (c) Be made at or prior to the time of the recommendation or referral of the product or service for which consideration or commission is paid or prior to the client retaining the licensee to whom the client has been referred for which a referral fee is paid; or
 - (d) Be made prior to the time the licensee undertakes representation of or performance of the service upon which a contingent fee will be charged.
- (5) The following form may be used to comply with the disclosures required by this rule and Tenn. Code Ann. §§62-1-122 and 62-1-123. A form which contains additional information may be used by a licensee if the form includes the minimum disclosure requirements.

STATEMENT OF DISCLOSURE OF COMMISSIONS, CONTINGENT FEES, AND OTHER CONSIDERATION

Certified public accountants and public accountants are required by law to disclose to clients the receipt or payment of certain commissions and contingent fees.

(Rule 0020-3-.06, continued)

The purpose of this disclosure statement is to acknowledge that proper disclosure has been made and that a copy of this statement has been provided to each of the signatories thereof.

I hereby acknowledge that on this _____ day of _____, 20____.

_____ has disclosed that he/she/the firm will receive/pay a

CPA/PA/Firm

commission/contingent fee/consideration of _____

AMOUNT

in relation to goods or services he/she/the firm has agreed to provide or recommend.

Client (signature)

Date

CPA/PA/Firm (signature)

Date

Authority: T.C.A. §§62-1-105, 62-1-111, 62-1-122 and 62-1-123. **Administrative History:** Original rule filed June 9, 1981; effective August 18, 1981. Amendment filed February 18, 1993; effective April 3, 1993. Amendment filed February 16, 1998; effective May 2, 1998. Repeal and new rule filed June 10, 1999; effective August 24, 1999. Amendment filed August 15, 2006; effective October 29, 2006.

0020-3-.07 COMPETENCE.

- (1) A licensee shall comply with the following standards and with any interpretations thereof by bodies designated by the AICPA, or by other entities having similar generally recognized authority.
 - (a) Professional Competence. Undertake only those professional services that the licensee or the licensee's firm can reasonably expect to be completed with professional competence.
 - (b) Due Professional Care. Exercise due professional care in the performance of professional services.
 - (c) Planning and Supervision. Adequately plan and supervise the performance of professional services.
 - (d) Sufficient Relevant Data. Obtain sufficient relevant data to afford a reasonable basis for conclusions or recommendations in relation to any professional services performed.

Authority: T.C.A. §§62-1-105 and 62-1-111. **Administrative History:** Original rule filed June 9, 1981; effective August 18, 1981. Amendment filed February 18, 1993; effective April 3, 1993. Repeal and new rule filed June 10, 1999; effective August 24, 1999. Amendment filed August 15, 2006; effective October 29, 2006.

0020-3-.08 COMPLIANCE WITH STANDARDS.

A licensee who performs attest, management advisory, tax, or other professional services shall comply with standards promulgated by the American Institute of Certified Public Accountants or by other entities having similar authority as recognized by the Board.

(Rule 0020-3-.08, continued)

Authority: T.C.A. §§62-1-105 and 62-1-111. **Administrative History:** Original rule filed June 9, 1981; effective August 18, 1981. Amendment filed February 18, 1993; effective April 3, 1993. Repeal and new rule filed June 10, 1999; effective August 24, 1999. Amendment filed August 15, 2006; effective October 29, 2006.

0020-3-.09 ACCOUNTING PRINCIPLES.

- (1) A licensee shall not:
 - (a) Express an opinion or state affirmatively that the financial statements or other financial data of any entity are presented in conformity with generally accepted accounting principles; or
 - (b) State that he or she is not aware of any material modifications that should be made to such statements or data in order for them to be in conformity with generally accepted accounting principles if such statements or data contain any departure from an accounting principle promulgated by bodies designated by the AICPA to establish such principles, which departure has a material effect on the statements or data taken as a whole.

Authority: T.C.A. §§62-1-105 and 62-1-111. **Amendment History:** Original rule filed June 9, 1981; effective August 18, 1981. Amendment filed February 18, 1993; effective April 3, 1993. Repeal and new rule filed June 10, 1999; effective August 24, 1999. Amendment filed August 15, 2006; effective October 29, 2006.

0020-3-.10 CONFIDENTIAL CLIENT INFORMATION.

- (1) A licensee shall not disclose any confidential client information without the specific consent of the client.
- (2) This rule shall not be construed to:
 - (a) Relieve a licensee of his or her professional obligations under Rules 0020-3-.08 and 0020-3-.09;
 - (b) Affect in any way the licensee's obligation to comply with a validly issued and enforceable subpoena or summons;
 - (c) Prohibit review of a licensee's professional practice by the AICPA, a state CPA society or state PA association, or the Board;
 - (d) Preclude a licensee from initiating a complaint with or responding to any inquiry made by a recognized investigative or disciplinary body;
 - (e) Prohibit a licensee from utilizing any such relevant information in the defense of a claim or reasonably anticipated claim against the licensee; or
 - (f) Restrict the exchange of information with a recognized investigative or disciplinary body.
- (3) Licensees of a recognized investigative or disciplinary body and professional practice reviewers shall not use to their own advantage or disclose any licensee's confidential client information that comes to their attention in carrying out their official responsibilities.

Authority: T.C.A. §§62-1-105; 62-1-111 and 62-1-116. **Administrative History:** Original rule filed June 9, 1981; effective August 18, 1981. Amendment filed February 18, 1993; effective April 3, 1993. Repeal and new rule filed June 10, 1999; effective August 24, 1999.

0020-3-.11 RECORDS.

- (1) A licensee shall, upon request made within a reasonable time, furnish to his or her client or former client:
 - (a) A copy of any report or other documentation belonging to, or obtained from or on behalf of, the client, which the licensee removed from the client's custody. The licensee may make and retain copies of such documents when they form the basis for work performed by the licensee;
 - (b) Any accounting or other documents belonging to, or obtained from or on behalf of, the client, which the licensee removed from the client's premises or received from the client's custody. The licensee may make and retain copies of such documents when they form the basis for work performed by the licensee; and
 - (c) A copy of the licensee's working papers, to the extent that such working papers include records which would ordinarily constitute part of the client's books and records and are not otherwise available to the client, to include but not be limited to general ledgers, general journals, fixed asset and depreciation records. Provided, however, that nothing in this rule shall require a licensee to furnish any work product to his or her client or others before the client has made satisfactory arrangements for payment for services rendered to or on behalf of such client.

Authority: T.C.A. §§62-1-105 and 62-1-115. **Administrative History:** Original rule filed June 9, 1981; effective August 18, 1981. Repeal filed February 18, 1993; effective April 3, 1993. Original rule filed June 10, 1999; effective August 24, 1999. Amendment filed October 17, 2003; effective December 31, 2003. Amendment filed August 15, 2006; effective October 29, 2006.

0020-3-.12 DISCREDITABLE ACTS.

- (1) A licensee shall not commit any act that reflects adversely on the profession.
- (2) A licensee or a candidate for licensure who solicits, discloses, and/or uses information obtained through violation of any nondisclosure statement of the Uniform CPA Examination shall be considered to have committed an act discreditable to the profession.

Authority: T.C.A. §§62-1-105 and 62-1-111. **Administrative History:** Original rule filed June 9, 1981; effective August 18, 1981. Amendment filed February 18, 1993; effective April 3, 1993. Repeal and new rule filed June 10, 1999; effective August 24, 1999. Amendment filed August 15, 2006; effective October 29, 2006.

0020-3-.13 ACTING THROUGH OTHERS.

- (1) A licensee shall not permit others to carry out on his/her behalf, either with or without compensation, any act which, if carried out by the licensee, would constitute a violation of this chapter.

Authority: T.C.A. §§62-1-105 and 62-1-111. **Administrative History:** Original rule filed June 9, 1981; effective August 18, 1981. Amendment filed February 18, 1993; effective April 3, 1993. Repeal and new rule filed June 10, 1999; effective August 24, 1999.

0020-3-.14 ADVERTISING AND OTHER FORMS OF SOLICITATION.

- (1) A licensee shall not seek to obtain clients by advertising or other forms of solicitation in a manner that is false, misleading or deceptive.
- (2) Solicitation by the use of coercion, over-reaching or harassing conduct is prohibited.

(Rule 0020-3-.14, continued)

Authority: T.C.A. §§62-1-105 and 62-1-111. **Administrative History:** Original rule filed June 9, 1981; effective August 18, 1981. Amendment filed February 18, 1993; effective April 3, 1993. Amendment filed May 11, 1995; effective July 24, 1995. Repeal and new rule filed June 10, 1999; effective August 24, 1999.

0020-3-.15 FIRMS.

- (1) A CPA or PA firm name is misleading under § 62-1-113(i) if, among other things, its name:
 - (a) Implies the existence of a corporation when the firm is not a corporation;
 - (b) Implies the existence of a partnership when the firm is not a partnership;
 - (c) Is similar to or the same as existing fictitious names within the State of Tennessee;
 - (d) Tends to mislead regarding the nature of the business or the affiliation of the trade name user with another business entity;
 - (e) Contains more than one (1) fictitious name;
 - (f) Includes the name of an individual whose license has been suspended or revoked by the Board;
 - (g) Includes the name of a person who is neither a present nor a past partner, member or shareholder of the firm; or
 - (h) Includes the name of a person who is not a CPA, if the title “CPAs” is included in the firm name.
- (2) A fictitious CPA or PA firm name (that is, one not consisting of the names or initials of one or more present or former partners, members or shareholders) may not be used by a CPA firm unless such name has been registered with and approved by the Board, and it is not false or misleading.
- (3) The Board may disapprove of the use of any fictitious name that falls within one (1) of the prohibitions listed in paragraph (1) of this rule or if it determines after notice and hearing that the trade name is deceptive.
- (4) A certified public accountant or public accountant may practice under his/her own name or that of inactive or deceased partners or shareholders who were certified public accountants or public accountants. A partner or shareholder surviving the death or withdrawal (unless (1)(f) applies) of all other partners or shareholders may continue to practice under the partnership or professional association name for up to two (2) years after becoming a sole practitioner.
- (5) When a firm name violation is determined to exist, the firm shall have sixty (60) days after notification by the Board to come into compliance with all applicable rules and statutes.

Authority: T.C.A. §§62-1-105, 62-1-108, 62-1-111 and 62-1-113.. **Administrative History:** Original rule filed June 9, 1981; effective August 18, 1981. Amendment filed February 18, 1993; effective April 3, 1993. Repeal and new rule filed June 10, 1999; effective August 24, 1999. Amendment filed August 15, 2006; effective October 29, 2006.

0020-3-.16 NOTIFICATION TO THE BOARD.

- (1) A licensee shall notify the Board in writing within thirty (30) days of any change of name, address and, in the case of individual licensees, change of employment.

(Rule 0020-3-.16, continued)

- (2) Except as otherwise provided, a licensee shall respond in writing to any communication from the Board requesting a response within thirty (30) days of the mailing of such communication by registered or certified mail to the last address furnished to the Board by the licensee.
- (3) Upon the receipt of a complaint against a licensee, the Board may transmit a copy of such complaint to the licensee. Such licensee shall, within fourteen (14) days of receipt, file a written answer to the complaint with the Board, unless otherwise granted an extension of time.

Authority: T.C.A. §§62-1-105 and 62-1-111. **Administrative History:** Original rule filed June 9, 1981; effective August 18, 1981. Amendment filed August 7, 1985; effective September 6, 1985. Amendment filed February 18, 1993; effective April 3, 1993. Repeal and new rule filed June 10, 1999; effective August 24, 1999. Amendment filed August 15, 2006; effective October 29, 2006.

0020-3-.17 RETENTION OF RECORDS.

A licensee shall maintain copies, or other obtainable facsimile records, or computer records, in whatever manner kept, of all work papers and work product used to render or support rendering public accounting services to a client for a period of five (5) years. The five (5) year period shall commence at the end of the fiscal period in which the engagement was conducted. Premature destruction of these records shall subject the licensee to disciplinary action.

Authority: T.C.A. §§62-1-105(e)(4) and 62-1-111. **Administrative History:** Original rule filed October 15, 2003; effective December 29, 2003.